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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

JPMORGAN CHASE BANK, N.A.,  
  
 Plaintiff,  
  
 v.  
  
 KB HOME *et al.*,  
  
 Defendant.

This Document Relates To:  
 All Actions

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2:08-CV-01711-PMP-RJJ  
 BASE FILE

**4th JOINT INTERIM DISCOVERY  
 STATUS REPORT**

Related Cases:  
 2:08-CV-01709-PMP-RJJ  
 2:08-CV-01713-PMP-RJJ  
 2:08-CV-01714-PMP-RJJ  
 2:08-CV-01715-PMP-RJJ  
 2:08-CV-01716-PMP-RJJ  
 2:08-CV-01717-PMP-RJJ

2:09-CV-01154-PMP-RJJ  
 2:09-CV-01547-PMP-RJJ  
 2:09-CV-01548-PMP-RJJ  
 2:09-CV-01549-PMP-RJJ  
 2:09-CV-01550-PMP-RJJ  
 2:09-CV-01551-PMP-RJJ  
 2:09-CV-01552-PMP-RJJ

Pursuant to the Court's October 9, 2009 Order concerning interim discovery status reports (Doc. # 147), the parties report as follows:

# **I. DISCOVERY COMPLETED TO DATE**

## **A. Document Requests**

1. On August 4, 2009, Plaintiff JPMorgan Chase Bank, N.A. ("JPMorgan") served its First Request for the Production of Documents.

2. On September 14, 2009, defendants Pardee Homes of Nevada and Weyerhaeuser Real Estate Company (collectively "Pardee"); Toll Brothers, Inc. and Coleman-Toll Limited Partnership (collectively "Toll"); KB Home and KB Home Nevada Inc. (collectively "KB"); Meritage Homes Corp. and Meritage Homes of Nevada, Inc. (collectively "Meritage"); and Beazer Homes USA, Inc. and Beazer Homes Holdings Corp. (collectively "Beazer", together with Pardee, Toll, KB, and Meritage, the "Builder Defendants") served their 1<sup>st</sup> Joint Request for the Production of Documents.

3. On October 28, 2009, the Builder Defendants served their first requests for production of documents to defendant and third-party defendant Focus South Group LLC.

4. On February 8, 2010, the Builder Defendants served their second requests for production of documents to JP Morgan.

5. On February 23, 2010, JPMorgan served its second requests for production of documents to KB Home Nevada, Coleman-Toll Limited Partnership, Beazer Homes Holdings Corp., Meritage Homes of Nevada, Inc., Pardee Homes of Nevada, and Focus South Group, LLC.

## **B. Responses to Document Requests and Document Productions**

1. On September 11, 2009, each of the Builder Defendants responded and objected to JPMorgan's document requests. In addition, the following defendants have produced documents in partial response to JPMorgan's requests as follows:

a. On September 25 and October 5, 2009, defendant Focus South Group, LLC produced just under 40,000 pages of documents;

b. On October 7, 2009, KB produced just over 4,500 pages of documents;

1 c. On October 8, 2009, Meritage produced just over 4,000 pages of  
2 documents;

3 d. On October 9, 2009, Beazer produced just over 10,000 pages of  
4 documents;

5 e. On October 23, 2009, Focus South Group LLC produced just over 3,000  
6 pages of documents;

7 f. On October 26, 2009, Pardee produced just under 2,500 pages of  
8 documents;

9 g. On October 29, 2009, Toll produced just over 11,000 pages of documents.

10 h. On November 11 and 20, 2009, Toll produced just over 37,000 pages of  
11 documents.

12 i. On November 20, 2009, Pardee produced just over 11,000 pages of  
13 documents.

14 j. On November 25, 2009, Beazer produced just over 11,000 pages of  
15 documents.

16 k. On December 10, 2009, Pardee produced just over 5,000 pages of  
17 documents.

18 l. On December 23, 2009, Beazer produced just under 22,500 pages of  
19 documents.

20 m. On January 4, 2010, Toll produced just over 60,000 pages of documents.

21 n. On January 5, 2010, Toll produced just over 42,000 pages of documents.

22 o. On January 13, 2010, Toll produced just over 321,000 pages of documents.

23 p. On January 15, 2010, Toll produced just under 12,000 pages of documents.

24 q. On January 12, 2010, Pardee produced just over 5,000 pages of documents.

25 r. On January 14, 2010, Focus produced just over 3,000 pages of documents.

26 2. On October 19, 2009, JPMorgan responded and objected to the Builder  
27 Defendants' requests.

28 a. On October 19, 2009, JPMorgan produced 10,897 pages of documents.

b. On February 25, 2010, JPMorgan produced just under 4,000 pages of documents.

c. On March 19, 2010, JPMorgan produced just under 10,000 pages of documents.

C. Other Written Discovery

1. On October 12, 2009, JPMorgan served its first set of interrogatories.

2. The Builder Defendants responded to JPMorgan's 1<sup>st</sup> Set of Interrogatories between November 16 and 25, 2009.

3. On February 8 and 23, 2010, KB Home and KB Home Nevada, Inc. served their first and second sets of interrogatories to JP Morgan.

4. On March 15, 2010, JPMorgan responded to KB Home's 1<sup>st</sup> Set of Interrogatories.

**II. DISCOVERY THAT REMAINS OUTSTANDING**

A. Document Requests

1. The parties are still in the process of conferring in connection with a number of discovery disputes concerning a limited number of document requests and other written discovery.

B. Discovery of Electronically Stored Information

1. The parties are still in the process of finalizing and memorializing their agreement for the review of electronically stored information.

C. Depositions

1. On October 28, 2009, the Builder Defendants served a notice of 30(b)(6) Deposition of JPMorgan.

2. On November 6, 2009, the Builder Defendants served Notices of Deposition of Scott Bogatz and Michael Wilkinson.

3. On November 20, 2009, JPMorgan served its response to the 30(b)(6) Deposition Notice.

1                   4.       On November 20, 2009, Focus served Responses and Objections to  
2 Defendants' Notices of Deposition of Mr. Bogatz and Mr. Wilkinson.

3                   D.     Third Party Discovery

4                   1.       On October 28, 2009, the Builder Defendants served notices regarding the  
5 issuance of subpoenas in to (1) George Larry Engel, (2) White & Case LLP, (3) Morrison &  
6 Foerster, LLP and (4) Sidley Austin, LLP.

7                   2.       White & Case LLP objected and refused to produce any documents in  
8 response to the subpoena issued to it.

9                   3.       On December 11, 2009, the Builder Defendants withdrew without  
10 prejudice the subpoenas to Mr. Engel and Morrison & Foerster, LLP.

11                  4.       On February 18, 2010, KB served their notices of Issuance of Subpoenas to  
12 testify at deposition and production of documents to Bank of America, Bank of Communications,  
13 California Bank & Trust, Calyon Bank Aka Credit Agricole Corporate Investment Bank, Cathay  
14 United Bank Ltd, Comercia Bank, Key Bank, KZH Cypressstree-1, KZH Pondview, KZH  
15 Sterling, PNC Bank, US Bank, Wachovia Bank N.A.

16                  5.       On February 5, 2010 and March 1, 2010, just over 89,000 pages of  
17 documents were produced in response to the subpoena issued to Sidley Austin LLP.

18                  6.       Between February 25, 2009 and March 16, 2010, the Builder Defendants  
19 served subpoenas to testify and produce documents on third-party witnesses (1) F. Patt Schiewitz,  
20 (2) Courtenay Wood, (3) Jonathan Westberg, (4) Bob Maganuco, and (5) Elena Bennett.

21                  7.       On March 11, 2010, responses and objections were served to the subpoena  
22 to produce to documents issued to Courtenay Wood.

23                  8.       On March 11, 2010, responses and objections were served to the subpoena  
24 to produce to documents issued to Jonathan Westberg.

25                  9.       On March 16, 2010, responses and objections were served to the subpoena  
26 to produce to documents issued to Bob Maganuco.

27                  10.       On March 19, 2010, responses and objections were served to the subpoena  
28 to produce to documents issued to F. Patt Schiewitz.

### III. PENDING DISCOVERY MOTIONS

#### A. Motion to Compel Lender Discovery.

1. Briefing was completed on Builder Defendants' Motion to Compel Plaintiff JPMorgan Chase Bank, N.A. to Produce Documents in the Possession or Control of the Other Lenders on December 7, 2009. A hearing regarding the Motion to Compel was held before the Court on January 15, 2010.

#### B. Motion for Protective Order

1. Plaintiff JPMorgan filed a Motion for Protective Order on December 16, 2009 in connection with document discovery sought by KB Home. At the same time as it filed the Motion for Protective Order, JPMorgan filed a Motion for an Order Shortening Time and for a Temporary Protective Order. JPMorgan's Motion for a Temporary Protective Order was denied on January 9, 2010. Briefing on the Motion for Protective Order was completed on January 14, 2010. On February 24, 2010, the Builder Defendants filed a Supplemental Memorandum in Opposition to JPMorgan's Motion for a Protective Order.

#### C. Motion to Compel

1. On December 17, 2009, the Builder Defendants filed a Motion to Compel the depositions of Mr. Wilkinson and Mr. Bogatz. Briefing on that motion was completed on January 11, 2010.

### IV. SETTLEMENT DETAILS

1. Prior to litigation, the parties, through counsel, engaged financial consultants to assist in loan workout negotiations. Although those negotiations failed, and this litigation ensued, the parties continue to discuss and consider potential workout scenarios with the aid of their consultants.

2. The parties are presently endeavoring to schedule a global mediation of all disputes encompassing All Actions and the related arbitration.

Dated: March 19, 2010

Respectfully submitted,

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